



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Long-Term Care Administrators; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC95-30-10
Regulation title	Regulations Governing the Practice of Assisted Living Facility Administrators
Action title	Reduction in experience requirements for licensure
Date this document prepared	3/14/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Board has acted to reduce the experience required for initial licensure of current assisted living facility administrators from two years to one year and to allow the experience to count immediately preceding application, rather than immediately preceding the effective date of regulations (January 2, 2008). Additionally, the years of previous health care related experience required in order for persons to receive credit towards the assisted living facility administrator-in-training (ALF AIT) program has been reduced from two years to one year.

The Board has also proposed to lessen the requirements for a person to serve as a preceptor for someone in an ALF AIT by reducing the required number of years of experience as a full-time administrator from two to one year. The proposal will also provide that the Board may waive the required application and fee for a person who wants to be a preceptor for assisted living and who is already approved as a preceptor for nursing home licensure.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Long-Term Care Administrators adopted the amendments to 18VAC95-30-10 et seq., Regulations Governing the Practice of Assisted Living Facility Administrators on March 11, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards, including the Board of Long-Term Care Administrators, the responsibility to promulgate regulations and establish renewal schedules:

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title...

The specific authorization to promulgate regulations for implementation of licensure of assisted living facility administrators is found in Chapter 31 of Title 54.1 in the following sections:

CHAPTER 31.

NURSING HOME AND ASSISTED LIVING FACILITY ADMINISTRATORS.

§ 54.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Assisted living facility" means any public or private assisted living facility, as defined in § 63.2-100, that is required to be licensed as an assisted living facility by the Department of Social Services under the provisions of Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.

"Board" means the Board of Long-Term Care Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ [32.1-123](#) et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ [54.1-3102](#). License required.

A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.

B. In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § [63.2-100](#), shall not be required to be licensed.

§ [54.1-3103.1](#). Administrator required for operation of assisted living facility; operation after death, illness, etc., of administrator; notification of Board; administrators operating more than one facility.

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § [54.1-3102](#). If a licensed assisted living facility administrator dies, becomes ill, resigns, or is discharged, the assisted living facility that was administered by him at the time of his death, illness, resignation, or discharge may continue to operate until his successor qualifies, but in no case for longer than is permitted by the licensing authority for the facility. The temporary supervisor or administrator shall immediately notify the Board of Long-Term Care Administrators and the Commissioner of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator.

B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the administrator of record for more than one assisted living facility as permitted by regulations of the licensing authority for the facility.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Amendments are proposed to address the need for qualifying more persons for licensure in assisted living facilities. Senate Bill 1183 (Chapter 610) and House Bill 2512 (Chapter 924) in the 2005 General Assembly required the Board of Long Term Care Administrators to promulgate regulations for the licensure and regulation of administrators in assisted living facilities. An enactment specified that the statutory requirement for all facilities licensed to provide assisted living care to have a licensed administrator becomes effective one year after the effective date of the regulations. Staff of the Board believes that some smaller facilities may have significant difficulty in meeting the current requirements, so changes were suggested that would enable more current administrators to qualify and would make it less burdensome for licensees to serve as preceptors for those in training. Since minimal competency for all licensees is assured by

passage of a national examination in assisted living and residential care, the Board believes the reduction in required experience will not jeopardize the health, safety and welfare of the residents served in an assisted living facility. If, however, there are not a sufficient number of persons able to qualify for licensure, there could be assisted living facilities that would have to close their doors. Should that be the result, it could jeopardize the health, safety and welfare of persons who would be unable to care for themselves in another environment.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Because of serious concerns about the availability of qualified persons to be licensed as assisted living administrators, the Board has determined that a fast-track process is appropriate. While there is some concern about lowering standards, the experience track for current administrators is time-limited and can only be utilized for one year (until January 2, 2009). The Board also has assurance that requiring passage of the national examination may eliminate those who do not have the basic knowledge and skills to be licensed administrators.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The Board has acted to reduce the experience required for initial licensure of current assisted living facility administrators from two years to one year and to allow the experience to count immediately preceding application, rather than immediately preceding the effective date of regulations (January 2, 2008). Additionally, the years of previous health care related experience required in order for persons to receive credit towards the assisted living facility administrator-in-training (ALF AIT) program has been reduced from two years to one year.

The Board has also proposed to lessen the requirements for a person to serve as a preceptor for someone in an ALF AIT by reducing the required number of years of experience as a full-time administrator from two to one year. The proposal will also provide that the Board may waive the required application and fee for a person who wants to be a preceptor for assisted living and who is already approved as a preceptor for nursing home licensure.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*

3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1) The advantage to the public of the amendments may be that it will facilitate the licensure of current administrators and the ability of persons to gain required experience through an ALF AIT program. By doing so, there should be more administrators qualified for licensure and reduce the risk of forcing some facilities to close. With less burdensome requirements for preceptors, there should be more opportunities for persons to be trained, which will ensure a supply of licensed administrators for the future. There are no disadvantages; passage of an examination remains a measure of minimal competency, reducing some of the experience requirements should not be problematic.

2) There are no advantages or disadvantages to the agency or the Commonwealth. The Board staff is supportive of increasing the opportunities for licensure and for training.

3) There is no other pertinent matter of interest related to this action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will be no on-going expenditures related</p>
---	--

	to this action.
Projected cost of the regulation on localities	There are no costs to localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals affected by this regulation would be persons who will apply for licensure as an assisted living facility administrator and those persons who are already licensed and are willing to serve as preceptors for trainees.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 600 assisted living facilities that are required to have a licensed administrator by January 2, 2009. Of that number, most would qualify as small businesses. There are only 8 persons currently licensed as assisted living facility administrators and 8 persons who have qualified as preceptors.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There will be no costs to the affected individuals and businesses. There will be cost-savings in hours of training, in serving as a preceptor and in obtaining an initial license based on prior experience.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

As regulations for the licensure of assisted living facility administrators were being developed over the past two years, the Board began with the “nursing home” model for training, which requires 2,000 hours of training in an AIT program. The proposed regulations for assisted living specified 1,000 hours for an ALF AIT, but that was further reduced in adoption of final regulations to 640 hours. The experience required for a current administrator to be licensed was not concurrently reduced.

There was no statutory provision for “grandfathering” current administrators, so the Board chose to adopt a regulation that substituted recently-acquired experience as an administrator for the training that would be required in a training program. That requirement was set at two years of experience before the effective date of the regulations. To meet the need for licensing as many current administrators as possible, the Board has reduced the experience requirement (much as the training requirement was reduced) to allow persons with one year of experience to be licensed upon passage of the national examination. Additionally, the Board elected to follow the example of the Board of Nursing in its experience requirement for registration of medication aides and allow the one year of experience to be prior to applying for licensure, rather than one year prior to the effective date of the regulations. The end result will be that someone who began

as an administrator in December of 2007 will now have the opportunity to use that experience to be licensed before the deadline of January 2, 2009.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Proposed change and rationale
95	n/a	<p>Currently, regulations allow any person who has served as an assisted living administrator, an assistant administrator or a full-time regional administrator supervising ALF’s for the period of two of the four years immediately preceding the effective date of these regulations (January 2, 2008) to be licensed by the board until January 2, 2009. The amended regulation would change the experience requirement to <u>one year</u> of the four years and would allow for experience gained preceding application for licensure.</p> <p>The deletion of “licensed in the Commonwealth of Virginia” after “assisted living facility in subdivision 1 is intended to eliminate confusion. Assisted living facility is defined in Chapter 31 of Title 54.1 as a facility licensed by the Virginia Department of Social Services. Therefore, the omission of “licensed in the Commonwealth of Virginia” after “assisted living facility” in other references led some to believe it could include assisted living facilities in other states.</p> <p><i>The rationale for the change is explained in the purpose statement and in the alternatives section. The Board is concerned about having a sufficient supply of licensed administrators to ensure that assisted living facilities can comply with the statutory requirement by the deadline of January 2, 2009.</i></p>
150	n/a	<p>Section 150 sets out the required hours of training in an ALF AIT program and allow certain applicants to receive credit for previous health care experience. The proposed amendments will reduce the requirement for previous experience from two years to one year. It applies to persons who have been an assistant administrator in a licensed assisted living facility or nursing home or as a hospital administrator, an applicant who holds a license or a multistate licensure privilege as a registered nurse or a licensed</p>

		<p>practical nurse and who has held an administrative level supervisory position in nursing in a licensed assisted living facility or nursing home.</p> <p><i>Likewise, the intent of the Board is to make it less burdensome for persons with health care experience to gain the specialized knowledge of running an assisted living facility through a training program. The changes should have the effect of allowing more persons to qualify for licensure.</i></p>
180	n/a	<p>Currently, section 180 sets out the requirements for preceptors to supervise trainees in an ALF AIT. One of those requirements is employment full-time as an administrator in a training facility (licensed ALF) for two of the past four years. The Board proposes to reduce that requirement to one of the past four years, consistent with the experience reductions in other sections of the regulation.</p> <p>The Board has also provided that it may waive the application and fee (which is being reduced from \$125 to \$50 in an exempt action) for a person who is already approved as a preceptor for nursing home licensure. This will encourage more people who are already preceptors for nursing homes, but who have assisted living experience, to precept an ALF AIT.</p>